

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *Jf* D.C.  
05 JUL 26 AM 8:30

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

JAMES BERNARD,  
Plaintiff,

v.

BNSF RAILWAY CO.,  
Defendant.

No. 04-3008 M1/V

ORDER OF DISMISSAL

Plaintiff filed his Complaint in this case on December 13, 2004. More than 120 days has passed since the filing of the Complaint and it appears that Plaintiff has not effected service upon the Defendant. On May 4, 2005, Plaintiff was ordered to show cause within ten days of the date of entry of the show cause order why this action should not be dismissed in accordance with Federal Rule of Civil Procedure 4(m).<sup>1</sup> To date, Plaintiff has

<sup>1</sup> Federal Rule of Civil Procedure 4(m) provides:

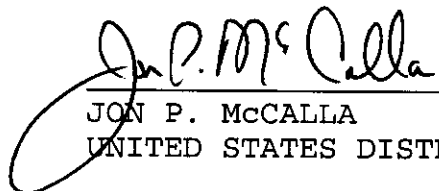
If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

Fed. R. Civ. P. 4(m).

3

not filed a response to the show cause order. Accordingly, the Court DISMISSES this action, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m).

So ORDERED this 25 day of July, 2005.

  
\_\_\_\_\_  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 3 in case 2:04-CV-03008 was distributed by fax, mail, or direct printing on July 26, 2005 to the parties listed.

---

Richard B. Fields  
LAW OFFICE OF RICHARD B. FIELDS  
688 Jefferson Ave.  
Memphis, TN 38105--193

Honorable Jon McCalla  
US DISTRICT COURT